

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1125 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DALWADI RAVJI BOGHA

Versus

STATE OF GUJARAT

Appearance:

MR SURESH M SHAH for Petitioner

MS PS PARMAR for Respondent No. 1 and 2

MR AVINASH K MANKAD for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/01/97

ORAL JUDGEMENT

1. Heard learned counsel for the parties. Challenge is made by the petitioner in this Special Civil Application to the orders annexure 'A' and 'B' of the respondents no.2 and 1 under which the sale of the part of land of survey no.185, made by the owner thereof in favour of the petitioner, was held to be invalid and contrary to the provisions of the Bombay Prevention of

Fragmentation and Consolidation of Holdings Act, 1947.

2. The facts in brief of the case are that the respondent no.3 was the owner and in possession of the land bearing survey no.185, admeasuring 1 acres and 34 gunthas situated at Village Gokharwada near Chuda of Limbdi Taluka which has a facility of water from the well located in survey no.181/2. The petitioner and his brother Ramji jointly purchased 1 acre and 2 gunthas of the land from survey no.185 from the respondent by the registered sale deed on 22nd March, 1971. Thereafter the brother of the petitioner Ramji relinquished his share therefrom in favour of the petitioner after purchase of this land. The same was mutated in the name of petitioner in the record of rights on 3-6-1971 vide entry no.933 and same has been sanctioned after verification on 15-9-1971. The petitioner purchased the remaining part of the land of survey no.185 from the respondent no.3 vide sale deed dated 1-4-1985 and as such, the petitioner has become the full owner of the entire survey no.185. The Dy. Collector issued the notice in the year 1984 to call upon the petitioner to show why the transaction of the sale deed dated 22nd March, 1971 may not be cancelled. The petitioner contested the matter, but the Dy. Collector held that the sale deed dated 22nd March, 1971 has been made in violation of provisions of sec.8 of the Act, 1947 and imposed a fine and ordered for summarily eviction of the petitioner. The petitioner has taken up the matter in revision. In the revision application, the petitioner has pointed out that he has already purchased the remaining part of survey no.185. The other contentions have also been raised, but the revisional authority has dismissed the revision under the order dated 28th November, 1985. Hence, this Special Civil Application.

3. Shri Shah, learned counsel for the petitioner contended that the action of the respondent initiated after 12 years of sale is wholly arbitrary and unjustified. It has next been contended that whatever fragmentation has been made by the petitioner is no more survives in view of the fact that the remaining part of survey no.185 has been purchased by the petitioner from respondent no.3 on 1-4-1985. The other sale deed has not been questioned by the respondent. It has next been contended by the learned counsel for the petitioner that in case the order of the lower authority is maintained then in the changed circumstances it will be a case of fragmentation.

4. On the other hand, the counsel for the respondent

supported the orders of the authorities.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The counsel for the respondent no.3 admits that the remaining part of the land of survey no.185 has been sold to the petitioner on 1-4-1985 by a registered sale deed. The counsel for the respondents no.1 and 2 does not dispute that the land which has been sold to the petitioner vide sale deed dated 22-3-1971 was under the registered sale deed and necessary correction in the record of rights has been made in favour of the petitioner on 3-6-1971, which entry has been sanctioned after verification on 15-9-1971. The counsel for the respondent no.2 further admits that the action has been taken first time against the petitioner by the authorities in the year 1984. The limitation for taking the action for declaring transaction to be void under the provisions of the Act, 1947 is not laid down or prescribed, but it is not at the sweet will of the of the respondent to take the action at any time. It is not a case where the respondents no.1 and 2 were not aware of the sale of the land under the sale deed dated 22-3-1971 made by the respondent no.3 in favour of the petitioner. The necessary correction in the record of the rights has been made in the month of September, 1971 by the Revenue department of the State of Gujarat. So in the year 1971 itself it has come in the revenue record of the State of Gujarat that the petitioner has purchased the land vide sale deed dated 22nd March, 1971. The action has been taken after more than 12 years of the date of sale. No explanation whatsoever has forthcome from the respondent for this delay in taking action. This is unreasonable and unexplained delay. In the circumstances of the case, the delay of 12 years in taking of the action cannot be said to reasonable and justified. Both the authorities has committed serious illegality in not considering this aspect of the matter in correct perspective. Otherwise also, in view of the fact that the remaining part of the land of survey no.185 has already been purchased by the petitioner on 1-4-1985 in substance, nothing more now survives. Whatever illegality or violation of the Act, 1947 was there, no more now remains from 1-4-1985 when whole of the land of survey no.185 has come in the ownership and occupation of the petitioner. This aspect of the case has not been considered by the respondent no.2 while deciding the revision application. The delay in initiation of the proceedings coupled with the fact that the petitioner has already purchased the remaining part of the land of survey no.185, is sufficient for acceptance of this Special Civil Application.

6. In the result, this Special Civil Application succeeds and the same is allowed. The orders impugned in this Special Civil Application annexure 'A' and 'B' are quashed and set aside. Rule made absolute. No order as to costs.

zgs/-